

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TIMOTHY E. STROWMATT,)	
)	
Petitioner,)	
)	
v.)	No. 1:20-cv-02611-JPH-MG
)	
MARK SEVIER,)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS

Petitioner Timothy Strowmatt filed this 28 U.S.C. § 2254 petition for writ of habeas corpus challenging his parole revocation in Indiana case number 71D02-0404-FC-00119. The Court directed the respondent to show cause why the writ should not issue. Specifically, the Court ordered the respondent to file either (1) a motion to dismiss "argu[ing] that **all** claims in the petition are subject to one of the procedural bars for dismissal outlined in Rule 5(b) [of the Rules Governing Section 2254 Cases in the United States District Courts]" or (2) a merits response to the petition. Dkt. 4 at 1–2.

The respondent filed a motion to dismiss, but the motion does not raise any of the procedural bars from Habeas Corpus Rule 5(b). Instead, the motion argues that Mr. Strowmatt's petition fails to show that his parole revocation violates the constitution. Such arguments should have been made in a merits response, not a motion to dismiss. Dkt. 4 at 1; *cf. Browder v. Director, Dep't of Corr. of Ill.*, 434 U.S. 257, 269 n.14 (1978) (Rule 12(b)(6) motion to dismiss inappropriate in habeas corpus case). The respondent's motion to dismiss, dkt. [8], is therefore **DENIED**. The motion to strike the petitioner's surreply, dkt. [21], is **DENIED** as moot.

The respondent shall have **21 days from the entry of this Order** to file a return to the petition and any additional materials required by Habeas Corpus Rule 5. The petitioner shall then have **28 days** to file a reply. No additional briefing will be permitted without advance leave of the Court.

SO ORDERED.

Date: 7/1/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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